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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,215	01/23/2004	Boon Peng Chew	P142M	9145
27752 7590 03/03/2010 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER VAKILL, ZOHREH				
ART UNIT		PAPER NUMBER		
1614				
MAIL DATE		DELIVERY MODE		
03/03/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/764,215

Applicant(s)

CHEW ET AL.

Examiner

ZOHREH VAKILI

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-17 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-4 and 6-17 are presented for examination.

Applicant's Amendment filed October 29, 2009 has been received and entered into the present application. Claims 10-17 are withdrawn. Claims 1-4 and 6-9 are pending and are herein examined on the merits.

Applicant's arguments, filed October 29, 2009 have been fully considered. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

Claim Rejections - 35 USC § 102 (Maintained)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Oliveira et al. (US Pub. No. 2003/0157239 A1).

Oliveira et al. teach a composition that has high protein, low soluble-sugar, oil containing soybean meal suitable for use as a partial or full replacement of fish meal and other protein and energy sources in the manufacture of fish and land animal feeds

and pet foods. This syrup is also suitable to be used as a taste enhancer for animal feed (typically added to the soybean meal) (see abstract). The soybean meal of this invention also is useful as a protein and energy source in other manufactured animal feeds, such as shrimp, piglets, calves and pet animals (for example, cats and dogs) (see page 4, paragraph 0040). Oliveira et al. further teach using 25.7 mg of astaxanthin per 1883.0257 g composition, which corresponds to 0.00136% weight of the composition (see page 6, table 2). The reference anticipates the claims.

Response to Arguments

Applicant argues that Oliveira makes no reference to astaxanthin as being included in soybean meal for cats and dogs. Applicant further argues Oliveira, on page 5, discloses typical characteristics of soybean meal. Oliveira does not disclose astaxanthin as a component of soybean meal on page 5. In Tables 1 and 2 of Oliveira, it discloses nine diet formulations of diets for fish feed and corresponding proximate compositions of the nine diets. As shown in Table 1, diets 1, 2, 3, and 4 include Denofa soybean meal while diets 5, 6, 7, and 8 contain AkvaSoy soybean meal, which is the soybean meal made by the disclosure of Oliveira. Importantly, diet 0 does not contain either of the soybean meals used in diets 1-8. As shown in Tables 1 and 2, each and every diet (0 through 8) contain astaxanthin, and Table 1 lists it as a "Constant ingredient" and Applicant further concludes that the astaxanthin is not coming from the

two soybean meals but is present in some other ingredient or is being added on its own to the diets.

Examiner does not agree with Applicants' argument above. Applicant has taken pieces of the reference and has made his own interpretation of the reference. Applicant needs to take the reference in its entirety and not pieces of it, since the reference as the whole anticipates the claimed invention. Very simply Oliveira et al. discloses a high protein, low soluble-sugar, oil containing **soybean meal** suitable for use as a partial or full replacement of fish meal and other protein and energy sources in the manufacture of **fish and land animal feeds and petfoods (Emphasis added) (see abstract)**. See paragraph 0040 as quoted: "the **soybean meal** of this invention also is useful as a protein and energy source in other manufactured animal feeds, particularly for carnivores and omnivores, for example, shrimp, piglets, calves and **pet animals (for example, cats and dogs)**". Further, the reference teaches the elements of the **soybean meal** as seen in Example 2, page 5, Table 1, the formulation of the soybean meal is disclosed which contains constant ingredients and as explained in detail one the elements in constant ingredients is astaxanthin. Further, Table 2 discloses the elements of the composition which include the amount of astaxanthin in mg. As long as it is taught by Oliveira that the energy source composition soy bean meal further comprising astaxanthin can be fed to animals such as fish as seen in Example 2. Therefore, the soybean meal can also be fed to pet animals such as cats and dogs as mentioned in the abstract and paragraph 0040. As Applicant has concluded astaxanthin is an ingredient added to the diets composition and also as

seen in Table 2 the composition of the diets contains the range of 22.4- 28.1 mg of astaxanthin in all compositions diet 0-8. Therefore, Oliveira et al. anticipate the claims.

Applicant's arguments were considered in its entirety but failed to be persuasive.

Conclusion

No claims of the present application are allowed.

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner 1614

February 22, 2010

/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614